

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO NO.793 of 2015 (O&M)
Date of Decision : 10.10.2017**

Charan Kaur & others

....APPELLANT(S)

VERSUS

Sandeep Singh & Others

....RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Arun Luthra, Advocate
for the appellants.

Mr. Vikas Mohan Gupta, Advocate with
Ms. Sonal Dutta, Advocate
for respondent no.3

B.S.WALIA, JUDGE (ORAL)

C.M.No. 2128-C-II of 2015

For the reasons as are mentioned in the application, delay
of 105 days in filing the appeal is condoned.

C.M.No. 2129-C-II of 2015

Application is for impleading LR's of appellant No.6.

Heard, for the reasons, mentioned in the application, the same
is allowed, subject to all just exceptions. LR's as per details given in
paragraph No. 2 of the application, are impleaded as party respondents for
the purpose of the appeal.

Amended memo of parties is taken on record.

FAO No. 793 of 2015

1. The wife, two unmarried sons, unmarried daughter and mother
of Lal Singh s/o Balwant Singh had filed a petition under

Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'Tribunal') seeking compensation of ₹ 20 lacs on account of the death of Lal Singh in a motor vehicular accident on 12th August, 2011 between Motorcycle bearing registration No. PB42-A-3804 and offending jeep bearing No.PB03M-9695, while Shri. Lal Singh (since deceased) was going from Dera to Ramthali.

2. On appreciation of the evidence led by the parties, the Tribunal assessed monthly income of the deceased @ ₹ 4400/- per month and deducted 1/4th of the same towards his personal living expenses, applied multiplier of 10 and awarded ₹ 4,41,000 as per below mentioned details:-

<i>Sr. NO.</i>	<i>Heads</i>	<i>Amount awarded</i>
1	Income	₹ 4400/-
2	1/4 th of income as Personal Expenses of deceased i.e. ₹4400-1100 = ₹3300/- per month with multiplier of 10	₹3300x12x10= ₹3,96,000/-
3	Loss of consortium	₹ 10,000/-
4	Funeral Expenses	₹ 25,000/-
5	Loss of love and affection	₹ 10,000/ to be shared equally amongst the LR's of the deceased
6	Loss of estate	Nil
7	Transportation of dead body of deceased from accident spot to hospital, from hospital to his native place and thereafter to the cremation ground	Nil
	Total	₹ 4,41,000/-

3. Ld. Counsel assailed the compensation awarded on the ground that the Tribunal had taken total earning of the deceased @ ₹4400/- per month on the basis of minimum wages as payable in the State of Haryana as per notification of January 2011, whereas, the accident had taken place on 12th August, 2011 and as per notification issued in the

month of July 2011 minimum wages for unskilled labour had been notified at ₹ 4643/- per month. Ld. counsel contended that in the circumstances, compensation payable was liable to be enhanced by taking into account the minimum wages notified for unskilled labour @ ₹ 4643 per month w.e.f. July 2011.

4. Ld. Counsel next contended that multiplier of 10 was applied whereas in view of the decision of the Hon'ble Supreme in **Smt.Sarla Verma and others vs. Delhi Transport Corporation and Anr. 2009(3) RCR (C) 77**, on account of age of the deceased being 53-55 years, multiplier of 11 was to be applied.

5. Ld. Counsel for the appellant further contended that award of compensation on account of loss of consortium was ₹ 10,000/-, whereas in view of the decision of the Hon'ble Supreme Court in **Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54**, amount payable on account of loss of consortium was to be at least ₹ 1,00,000/-. Ld. Counsel contended that in the circumstances, amount of consortium awarded i.e. ₹ 10,000/- was liable to be enhanced by ₹ 90,000/- raising the amount payable on account of loss of consortium to ₹ 1,00,000/-. Ld. Counsel relied on paragraph No. 20 of the decision of the Hon'ble Supreme Court in **Rajesh vs. Rajbir Singh's** case (supra) to contend that a minimum amount of at least ₹ 1,00,000/- is liable to be paid. Paragraph No. 20 of the Judgment of the Hon'ble Supreme Court is reproduced hereunder:-

“20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal

principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care, and guidance to children and funeral expenses. It may be noted that the sum of ₹ 2,500/- to ₹ 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of ₹ 5,000/- to ₹ 10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium, is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of the spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

6. Ld. counsel for the appellant further contended that no amount whatsoever was awarded on account of transportation charges incurred by the family of the deceased for transporting the dead body from the site of the accident to the hospital where his post mortem was conducted and from the hospital to his native place and thereafter to the cremation ground and that in the circumstances a sum of ₹ 25,000/- was a just

amount which should be awarded on account of transportation charges.

7. Learned counsel for the appellant has assailed the absence of award of any amount towards loss of estate and has contended that a sum of ₹ 50,000/- is liable to be awarded on that account.

8. Ld. Counsel lastly assailed the award on the ground that only ₹10,000/- was awarded to the legal heirs on account of loss of love and affection, whereas in view of paragraph No. 30 of the decision of the Hon'ble Supreme Court in **Vimal Kanwar and others vs. Kishore Dan and others, 2013 (2) RCR(Civil) 945**, a minimum amount of ₹ 1,00,000/- was awardable to each of the legal heirs. Paragraph No. 30 of the decision of the Hon'ble Supreme Court in **Vimal Kanwar's case (supra)** is reproduced hereunder:-

“30. Having regard to the facts and evidence on record, we estimate the monthly income of the deceased Sajjan Singh at ₹ 9,000 x 2= ₹ 18,000/- per month. From this his personal living expenses, which should be 1/3rd there being three dependents has to be deducted. Thereby, the 'actual salary' will come to ₹ 18,000-₹ 6000/- = ₹ 12,000/- x 12= ₹ 1,44,000/- per annum. As the deceased was 28 ½ years old at the time of death the multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out to be ₹ 1,44,000/-x17 = ₹ 24,48,000/- to which we add the usual award for loss of consortium and loss of the estate by providing a conventional sum of ₹ 1,00,000/-; loss of love and affection for the daughter ₹ 2,00,000/-, loss of love and affection for the widow and the mother at ₹ 1,00,000/- each i.e. ₹ 2,00,000/- and funeral expenses of ₹ 25,000/-”.

9. Ld. Counsel for the respondent Insurance company very fairly conceded that minimum wages had been revised by the Govt. of Haryana in the month of July 2011 from ₹ 4348/- to ₹ 4643/-.

10. Ld. Counsel for the respondent Insurance Company while not disputing the claim for enhancement of loss of consortium from ₹ 10,000/- to ₹ 1,00,000/- has assailed the claim of the appellant for loss of estate on the ground that as per paragraph No. 30 of the decision in **Vimal Kanwar's case (supra)** a consolidated amount is liable to be paid on account of loss of consortium and loss of estate. Ld. Counsel for the Insurance company contended that in the circumstances, total amount of ₹ 1,00,000/- was payable to the claimants on account of loss of consortium and loss of estate.

11. Ld. counsel for the Insurance Company contended that the amount of compensation payable on account of loss of love and affection is not a fixed amount and depends upon the nature of relationship, age and other such like factors. Ld. Counsel contended that in **Vimal Kanwar's case (supra)**, a sum of ₹ 2,00,000/- was awarded to the minor daughter, whereas, wife and mother were awarded a sum of ₹ 1,00,000/- each.

12. I have considered the submissions of Ld. Counsel for the parties, and am of the considered view that compensation awarded by the Tribunal is liable to be enhanced by taking into account the minimum wages for unskilled labourer as ₹ 4643/- instead of ₹ 4348/- per month on account of notification issued by the Government of Haryana revising rates of minimum wages payable to an unskilled labourer w.e.f July 2011 and the accident having taken place on 12th August, 2011.

13. It is also relevant to take note of the fact that the Tribunal applied multiplier of 10 whereas on account of age of deceased being between age group of 53-55, as per **Sarla Verma's case (supra)** multiplier of 11 is

to be applied. Accordingly computation of compensation payable would be by taking wages as ₹ 4643/- per month and multiplier of 11. In view of the position as noted above, a sum of ₹ 4,59,756/- would be payable on account of dependency as per details given hereunder :-

$$\text{₹ } 4643/4 = \text{₹ } 1160.$$

$$\text{₹ } 4643 - \text{₹ } 1160 = \text{₹ } 3483 \times 12 \times 11 = \text{₹ } 4,59,756/-.$$

14. As regards the claim of sum of ₹ 1,00,000/- on account of loss of love and affection for each of the legal heirs, a perusal of the decision of the Hon'ble Supreme Court in **Vimal Kanwar's case (supra)** reveals that a sum of ₹ 2,00,000/- was paid to the minor daughter and ₹ 1,00,000/- each to the widow and mother. In the instant case the claimants are widow, mother, two sons and daughter. In **Vimal Kanwar's case (supra)** the daughter was of 2 years of age whereas in the instant case the children are major with one son being 25 years of age. Accordingly, in the light of decision of the Hon'ble Supreme Court in **Vimal Kanwar's case (supra)** and taking into account the fact that the children of the deceased had his love and affection for a considerable span of his life and a daughter, wife and mother is more emotionally attached to her father, husband and son respectively, it is deemed appropriate to grant a compensation of ₹ 1,00,000/- to each of the claimant's i.e. daughter, wife and mother of the deceased and a sum of ₹ 50,000/- to each of the two sons.

15. The appellants have also claimed a sum of ₹ 25,000/- on account of transportation charges. However no evidence is on record with regard to any amount spent on account of transportation charges. However, taking

into account the fact that money would have been spent on account of transportation, an amount of ₹ 10,000/- is awarded on account of transportation charges taking into account the distance from the place of accident to the hospital and thereafter to the native place of the deceased i.e. almost 50 k.m.

Accordingly the claimants are held entitled to the following compensation:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount awarded</i>
(i)	Income	₹4643/-
(ii)	Net income after deduction of 1/4 of income as Personal Expenses of deceased	₹3483/-
(iii)	Compensation by applying multiplier of 11	₹3483x12x11= ₹4,59,756/-
(iv)	Loss of consortium (for the widow)	₹ 1,00,000/-
(v)	Loss of love and affection (₹ 1,00,000/- to daughter, ₹ 1,00,000/- each to mother and wife, ₹ 50,000/- each to sons.	₹ 4,00,000/-
(vi)	Transportation charges	₹10,000/-
(vii)	Funeral expenses	₹25,000/-
	Total	₹ 9,94,756/-

Accordingly, appeal is allowed in the aforementioned terms and the Award of the Tribunal is modified to the extent that the appellants are held entitled to total compensation of ₹ 9,94,756/-, i.e. ₹ 5,53,756/-(₹ 9,94,756 - ₹ 4,41,000) over and the above the amount awarded by the Tribunal. Interest shall be paid on the awarded amount @ 7.5% per annum from the date of filing of the claim petition till realisation.

B.S.WALIA
JUDGE

October 10, 2017

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No